

REMARKS

Claims 1-21 are pending in the application. Claims 11-13 have been withdrawn from consideration. Claims 1, 3, 8, 18 and 19 have been amended and claim 6 has been canceled. Favorable reconsideration of the application, as amended, is respectfully requested.

The specification at page 15, paragraph [0029] has been amended to correct minor typographical errors.

I. ELECTION/RESTRICTION

Applicants affirm the election of claims 1-10 and 14-21.

II. REJECTION OF CLAIMS 3, 15, 17, 19 AND 21 UNDER 35 U.S.C. § 112

Claims 3, 15, 17, 19 and 21 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 3, the Examiner contends that it is unclear what is meant by “a pair of first cut panels”. Claim 3 has been amended to recite that in a first cutting step, the first divided laminate is cut at a predetermined interval in the flow direction to obtain a pair of first cut panels adjacent each other. In a second cutting step, the second divided laminate is cut at a predetermined interval in the flow direction to obtain a pair of second cut panels adjacent each other. In view of the amendment to claim 3, Applicants respectfully request withdrawal of the rejection.

III. REJECTION OF CLAIMS 6, 17 AND 18 UNDER 35 U.S.C. § 112

Claims 6, 17 and 18 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner contends that it is unclear what is meant by “wherein non-contractile portions where a contractile force from the elastic member is not active is formed”.

Applicants believe the Examiner intended the rejection to be directed to claims 6, 18 and 19, rather than claims 6, 17 and 18, since the objected to language is not recited

in claim 17. Claims 1, 18 and 19 have been amended to recite that “the elastic member exerts a contractile force on the laminate in a contractile portion, and wherein non-contractile portions having no contractile force exerted thereon are formed in the laminate at a predetermined interval in the flow direction”. In view of the amendments to claims 6, 18 and 19, Applicants respectfully request withdrawal of the rejection.

IV. REJECTION OF CLAIM 8 UNDER 35 U.S.C. § 112

Claim 8 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner contends that it is unclear how one would be capable of “attaching the first cut panel and the second or third cut panel on a left side and a right side” since it would be impossible to attach the first and second panels on the same side since they were spaced apart from one another in the width direction of the laminate.

Applicants have amended claim 8 to recite the steps of: “attaching the first cut panel on a left side and the second or third cut panel on a right side of a sheet-like member to be the main body portion; and attaching the fourth cut panel on the left side and the third or second cut panel on the right side of the sheet-like member to be the main body portion”. In view of the amendment to claim 8, Applicants respectfully request withdrawal of the rejection.

V. REJECTION OF CLAIMS 1, 4-5 AND 7 UNDER 35 U.S.C. § 102(b)

Claims 1, 4-5 and 7 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Durrance et al. (U.S. Publication No. 2002/0002358) as evidenced by Morman (U.S. Patent No. 5,226,992). Applicants respectfully request withdrawal of the rejection for at least the following reasons.

Claim 1 has been amended to recite that the elastic members exerts a contractile force on the laminate in a contractile portion, wherein non-contractile portions extending in a direction perpendicular to the flow direction and having no contractile force exerted thereon are formed in the laminate at a predetermined interval in the flow direction, and, in the step of cutting the laminate to obtain the cut panels, the laminate is cut along

each non-contractile portion so that each cut panel includes at least a part of the non-contractile portion. Support for this amendment can be found in original claim 6. Claim 1 also recites that parallel elastic members are fed between a pair of sheet-like materials along a flow direction of the pair of sheet-like materials so as to obtain a laminate to be the side panels, wherein the parallel elastic members are continuous in the flow direction of the sheet-like materials and shrinkable in the flow direction. Support for this amendment can be found in the specification at least at paragraphs [0072] and [0074], and in FIG. 1(a) and FIG. 14(c). Claim 1 further recites that the pair of cut panels are attached to a sheet-like member to be the main body portion in the non-contractile portions of the pair of cut panels. Support for this amendment can be found at least in paragraph [0031] and FIGS. 1(c) and 2.

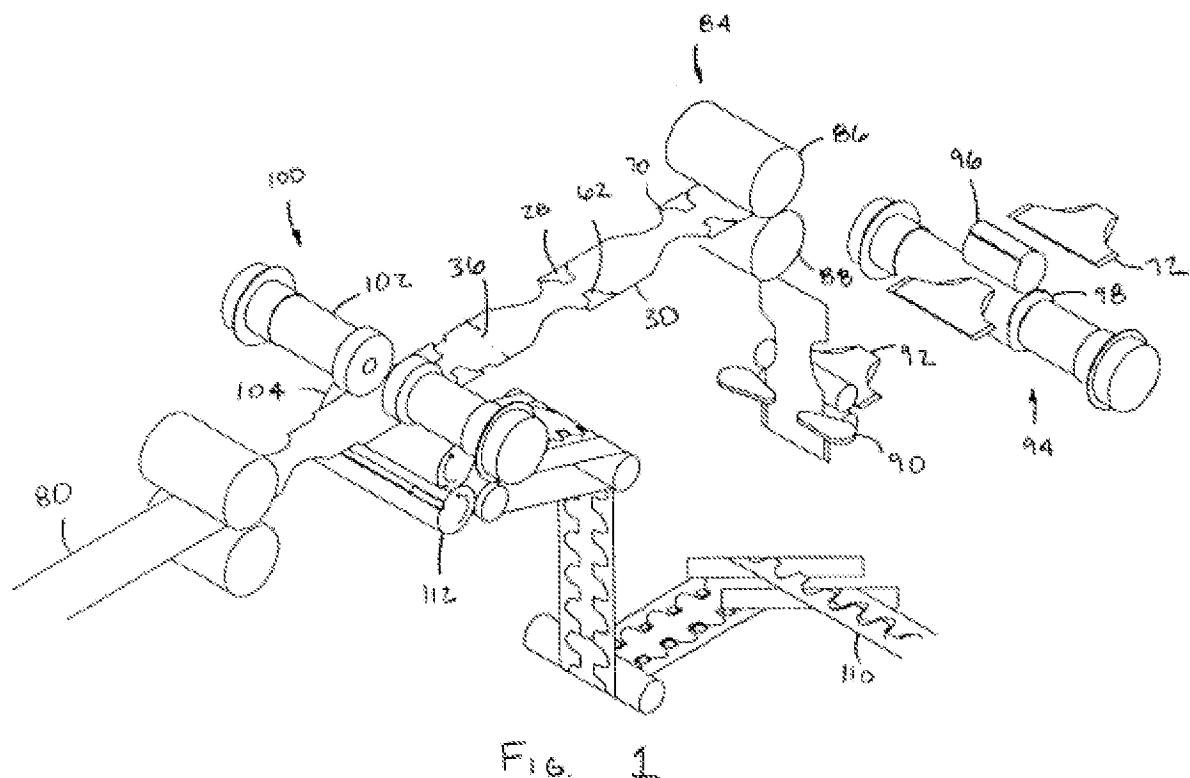
Durrance et al. fails to disclose or suggest side panels that are formed by feeding parallel elastic members between a pair of sheet-like materials, such that the parallel elastic members are continuous in the flow direction of the sheet-like materials and shrinkable in the flow direction. Furthermore, Durrance et al. fails to disclose or suggest cut panels formed from a laminate that has contractile portions and non-contractile portions wherein the laminate is cut along the non-contractile portion, resulting in a side panel that is made by attaching a pair of cut panels to the main body in the non-contractile portions of the pair of cut panels. Even further, Durrance et al. fails to disclose cutting a laminate to obtain cut panels at the same time the fastening element is cut into two pieces, as recited in claim 5. Because Durrance et al. fails to disclose all of the claimed features, the rejection of claims 1, 4-5 and 7 under 35 U.S.C. §102 should be withdrawn.

VI. REJECTION OF CLAIMS 2 AND 14 UNDER 35 U.S.C. § 102(b) / 103(a)

Claims 2 and 14 have been rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over McNichols (U.S. Patent No. 6,667,085) as evidenced by Morman (U.S. Patent No. 5,226,992).

Applicants respectfully traverse the rejection for at least the following reasons. McNichols fails to disclose or suggest changing an attitude of each cut panel to an

attitude that is obtained by rotation of about 90 degrees with respect to the flow direction of the laminate from which the cut panels are obtained.



Instead, McNichols discloses changing the direction of the flow of the webs of side panels 110 at the point that the webs are spaced apart, but does not disclose changing the direction of the side panels with respect to the flow direction of webs 110. (See Fig. 1 and column 7, lines 4-11.) In other words, the side panels continue to move in the direction of the webs from which they were cut. Because McNichols fails to teach or suggest all of the limitations of claims 2 and 14, the rejection under 35 U.S.C. §102/§103 should be withdrawn.

VII. REJECTION OF CLAIMS 2 AND 14 UNDER 35 U.S.C. § 103(a)

Claims 2 and 14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over McNichols (U.S. Patent No. 6,667,085) as evidenced by Morman (U.S. Patent No. 5,226,992) in view of Nease et al. (U.S. Patent No. 5,705,013). It is

the Examiner's position that if it is found that McNichols fails to disclose cutting the web in a flow direction to form two laminate webs, it would have been obvious to incorporate the teachings of Nease et al. into the method of McNichols because one of ordinary skill would have recognized the economic advantage of utilizing a zero-scrap method of producing side panels as taught by Nease et al.

Applicants respectfully traverse the rejection for at least the following reasons. As discussed above, McNichols fails to disclose or suggest changing an attitude of each cut panel to an attitude that is obtained by rotation of about 90 degrees with respect to the flow direction of the laminate from which the cut panels are obtained. Nease et al. also fails to teach or suggest this claimed feature. Thus, even if there were some motivation to combine the teachings of McNichols with those of Nease et al, the resulting combination would not result in the method of claim 2. Accordingly, prima facie obviousness cannot be established and the rejection of claims 2 and 14 under 35 U.S.C. §103 should be withdrawn.

VIII. REJECTION OF CLAIMS 3, 8-10 AND 15 UNDER 35 U.S.C. § 103(a)

Claims 3, 8-10 and 15 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson et al. (U.S. Patent No. 6,645,190), as evidenced by Mormon (U.S. Patent No. 5,226,992) in view of Nease et al. (U.S. Patent No. 5,705,013) and Pohjola (U.S. Patent No. 5,224,405). The Examiner acknowledges that Olson et al. fails to disclose the method utilized in forming the side panel from the web of elastic material in the method of Mormon, but that Nease et al. discloses a zero scrap method for manufacturing side panels for use with absorbent articles. It is the Examiner's position that it would have been obvious to incorporate the teachings of Nease et al. into the method of Olson et al. because one of ordinary skill would have recognized the economic advantages of utilizing a zero scrap method of producing side panels as taught by Nease et al. It is also the Examiner's position that it would have been obvious to incorporate a known successful method of rotating and placing a discrete side article onto web of material, such as the method of Pohjola, into the method of Olson et al. because such a modification would have been well within his technical grasp.

Applicants respectfully traverse the rejection for at least the following reasons. Claim 3, as amended, recites that the method includes the step of feeding an elastic member between a pair of sheet-like materials along a flow direction of the pair of sheet-like materials so as to obtain a laminate to be the side panels, wherein the elastic member is continuous in the flow direction of the sheet-like materials and shrinks in the flow direction. Claims 3 and 8 recite changing an attitude of the first and second cut panels to an attitude that is obtained by a rotation of about 90 degrees with respect to the flow direction and changing an attitude of the third and fourth cut panels to an attitude that is obtained by a rotation of about 90 degrees with respect to the flow direction.

Olson et al. makes no mention whatsoever of the process for making the laminate from which the side panels (34, 134) are formed, the process by which the laminate is cut to form side panels, and the process of attaching two pairs of side panels to the main body (32). Moreover, Olson et al. fails to teach or suggest a method of making a wearable article that includes first making side panels that shrink (stretch) in the flow direction and then attaching those side panels to a main body. Nease et al. also fails to teach or suggest making a wearable article that includes side panels that shrink (stretch) in the flow direction and then attaching those side panels to a main body. While Pohjola teaches a method of rotating a strip of material, there would have been no reason to combine the rotating apparatus or process of Pohjola with the process of Olson et al. and Nease et al. because to do so would make the side panels of Olson et al. and Nease et al. ineffective since they stretch in a direction perpendicular to the flow direction. Rotating the side panels of Olson et al. and Nease et al. 90° would prevent them from being able to stretch around the waist of the wearer.

The Federal Circuit has repeatedly emphasized that it is impermissible within the framework of 35 U.S.C. §103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to a full appreciation of what such reference fairly suggests to one of ordinary skill in the art. *Baush & Lomb, Inc. v. Barnes-Hind, Inc.*, 230 UPSQ 416 (Fed. Cir. 1986); *In re Hedges*, 228 USPQ 685 (Fed. Cir. 1986).

The Examiner has cobbled together four different references to show features of the method of claims 3 and 8, but has excluded the other teachings of the cited references that would lead one skilled in the art away from combining those cherry-picked features. Furthermore, the combined teachings of the cited references fail to all of the claim limitations of claims 3 and 8. Because a prima facie case of obviousness has not been established, Applicants respectfully request withdrawal of the rejection of claims 3, 8-10 and 15 under 35 U.S.C. §103.

IX. REJECTION OF CLAIMS 6 AND 7 UNDER 35 U.S.C. § 103(a)

Claims 6 and 7 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Durrance et al. (U.S. Publication No. 2002/0002358) and further in view of Nakakado et al. (U.S. Publication No. 2004/0035521). The Examiner acknowledges that Durrance et al. fails to disclose side panel material comprised of a material that has contractile and non-contractile sections. It is the Examiner's position, however, that it would have been obvious to incorporate the elastic web forming method of Nakakado et al. into the method of Durrance et al. because one of ordinary skill would recognize the economic benefits of applying the elastic intermittently as in the method of Nakakado.

Applicants respectfully traverse the rejection for at least the following reasons. As discussed above with regard to claim 1, Durrance et al. fails to disclose or suggest cut panels formed from a laminate that has contractile portions and non-contractile portions wherein the laminate is cut along the non-contractile portion, resulting in a side panel that is made by attaching a pair of cut panels to the main body in the non-contractile portions of the pair of cut panels. Nakakado et al. also fails to disclose or suggest cut side panels cut from a laminate that has contractile portions and non-contractile portions, wherein non-contractile portions are attached to the main body of the article. Instead, Nakakado et al. teaches a method of making a worn article wherein an absorbent material (C) is attached to the web in a non-elastic second web (W2), which is adjacent to an elastic first web (W1). The features recited in original claim 6 have been incorporated into claim 1 and claim 6 has been canceled. In the method of the present invention, an advantage provided by attaching non-contractile portions of

the cut side panels to the main body portion is that no concavity and convexity caused by gathers occurs in the non-contractile portion of the side panels at the attachment site. Therefore, as compared to attaching a contractile portion to a main body, attaching a non-contractile portion to a main body is easier and wrinkles rarely occur during the attachment process. Because the combined teachings of Durrance et al. and Nakakado et al. fail to teach or suggest all of the claim limitations, prima facie obviousness has not been established and the rejection under 35 U.S.C. §103 based on Durrance et al. and Nakakado et al. should be withdrawn.

X. REJECTION OF CLAIM 16 UNDER 35 U.S.C. § 103(a)

Claim 16 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over McNichols (U.S. Patent No. 6,667,085) as evidenced by Morman (U.S. Patent No. 5,226,992), or in the alternative, McNichols (U.S. Patent No. 6,667, 085) as evidenced by Morman (U.S. Patent No. 5,226,992) in view of Nease et al. (U.S. Patent No. 5,705,013) and further in view of Roessler et al. (U.S. Patent No. 5,399,219). It is the Examiner's position that it would have been obvious to incorporate a known method of forming side panel webs with fasteners, such as the method of Roessler, into the method of McNichols because such a modification would have been within his technical grasp.

Applicants respectfully traverse the rejection for at least the following reasons. As discussed above with regard to claim 2, McNichols fails to disclose or suggest changing an attitude of each cut panel to an attitude that is obtained by rotation of about 90 degrees with respect to the flow direction of the laminate from which the cut panels are obtained. In addition, McNichols fails to disclose or suggest the step of feeding parallel elastic members between a pair of sheet-like materials along a flow direction of the pair of sheet-like materials so as to obtain a laminate to be the side panels, as recited in claim 2. Neither Nease et al. nor Roessler et al. teach or suggest these claimed features. Thus, even if there were some motivation to combine the teachings of McNichols with those of Nease et al. and Roessler et al., the resulting combination would not produce the method of claim 16. Accordingly, prima facie obviousness

cannot be established and the rejection of claim 16 under 35 U.S.C. §103 should be withdrawn.

XI. REJECTION OF CLAIM 17 UNDER 35 U.S.C. § 103(a)

Claim 17 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson et al. (U.S. Patent No. 6,645,190), as evidenced by Mormon (US Patent No. 5,226,992), in view of Nease et al. (U.S. Patent No. 5,705,013) and Pohjola (U.S. Patent No. 5,224,405) and further in view of Surprise et al. (U.S. Patent No. 6,174,303). The Examiner contends that it would have been obvious to incorporate the teachings of Surprise et al. into the method of the combined references Olson et al., Mormon, Nease et al. and Pohjola and use a dual fastening system for the diaper because Surprise et al. teaches that a dual fastening system provides improved diaper fit as well as additional support for the absorbed chassis.

Applicants respectfully traverse the rejection for at least the following reasons. Claim 3, from which claim 17 depends, recites that the method includes the step of feeding an elastic member between a pair of sheet-like materials along a flow direction of the pair of sheet-like materials so as to obtain a laminate to be the side panels, wherein the elastic member is continuous in the flow direction of the sheet-like materials and shrinks in the flow direction. Claim 3 further recites changing an attitude of the first and second cut panels to an attitude that is obtained by a rotation of about 90 degrees with respect to the flow direction and changing an attitude of the third and fourth cut panels to an attitude that is obtained by a rotation of about 90 degrees with respect to the flow direction.

As discussed above with regard to claim 3, there would have been no reason to combine the rotating apparatus or process of Pohjola with the process of Olson et al. and Nease et al. because to do so would make the side panels of Olson et al. and Nease et al. ineffective since they stretch in a direction perpendicular to the flow direction. Rotating the side panels of Olson et al. and Nease et al. 90° would prevent them from being able to stretch around the waist of the wearer. The Examiner has cobbled together five different references to show features of the method of claim 17, but has excluded the other teachings of the cited references that would lead one skilled

in the art away from combining those cherry-picked features. Furthermore, the combined teachings of the cited references fail to disclose all of the claim limitations of 17, as Surprise et al. fails to teach the features missing from the combination of Olson et al., Mormon, Nease et al. and Pohjola. Because a prima facie case of obviousness has not been established, Applicants respectfully request withdrawal of the rejection of claim 17 under 35 U.S.C. §103.

XII. REJECTION OF CLAIMS 18 AND 20 UNDER 35 U.S.C. § 103(a)

Claims 18 and 20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over McNichols (U.S. Patent No. 6,667,085) as evidenced by Morman (U.S. Patent No. 5,226,992), or in the alternative, McNichols (U.S. Patent No. 6,667,085) as evidenced by Morman (U.S. Patent No. 5,226,992) in view of Nease et al. (U.S. Patent No. 5,705,013) and further in view of Nakakado et al. (U.S. Publication No. 2004/0035521). It is the Examiner's position that it would have been obvious to incorporate the elastic web forming method of Nakakado et al. into the method of the combined references McNichols, Mormon and Nease et al. because one of ordinary skill would recognize the economic benefits of applying the elastic intermittently as in the method of Nakakado et al.

Applicants respectfully traverse the rejection for at least the following reasons. As discussed above with regard to claim 2, McNichols fails to disclose or suggest changing an attitude of each cut panel to an attitude that is obtained by rotation of about 90 degrees with respect to the flow direction of the laminate from which the cut panels are obtained. In addition, McNichols fails to disclose or suggest the step of feeding parallel elastic members between a pair of sheet-like materials along a flow direction of the pair of sheet-like materials so as to obtain a laminate to be the side panels, and then cutting the laminate to form side panels, as recited in claim 2. Neither Nease et al. nor Nakakado et al. teach or suggest these claimed features. Thus, even if there were some motivation to combine the teachings of McNichols with those of Nease et al. and Nakakado et al., the resulting combination would not result in the method of claims 18 and 20. Accordingly, prima facie obviousness cannot be established and the rejection of claims 18 and 20 under 35 U.S.C. §103 should be withdrawn.

XIII. REJECTION OF CLAIMS 19 AND 21 UNDER 35 U.S.C. § 103(a)

Claims 19 and 21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson (U.S. Patent No. 6,645,190) as evidenced by Mormon, in view of Nease et al. (U.S. Patent No. 5,705,013) and Pohjola (U.S. Patent No. 5,224,405) and further in view of Nakakado et al. (U.S. Publication No. 2004/0035521). The Examiner contends that it would have been obvious to incorporate the elastic web forming method of Nakakado et al. into the method of the combined references Olson et al., Mormon, Nease et al. and Pohjola because one of ordinary skill would recognize the economic benefits of applying the elastic intermittently as in the method of Nakakado et al.

Applicants respectfully traverse the rejection for at least the following reasons. Claim 3, from which claims 19 and 21 depend, recites that the method includes the step of feeding an elastic member between a pair of sheet-like materials along a flow direction of the pair of sheet-like materials so as to obtain a laminate to be the side panels, wherein the elastic member is continuous in the flow direction of the sheet-like materials and shrinks in the flow direction. Claim 3 further recites changing an attitude of the first and second cut panels to an attitude that is obtained by a rotation of about 90 degrees with respect to the flow direction and changing an attitude of the third and fourth cut panels to an attitude that is obtained by a rotation of about 90 degrees with respect to the flow direction.

As discussed above with regard to claim 3, there would have been no reason to combine the rotating apparatus or process of Pohjola with the process of Olson et al. and Nease et al. because to do so would make the side panels of Olson et al. and Nease et al. ineffective since they stretch in a direction perpendicular to the flow direction. Rotating the side panels of Olson et al. and Nease et al. 90° would prevent them from being able to stretch around the waist of the wearer. The Examiner has cobbled together four different references to show features of the method of claim 3, but has excluded the other teachings of the cited references that would lead one skilled in the art away from combining those cherry-picked features. Furthermore, the combined teachings of the cited references fail to disclose all of the claim limitations of claim 3,

from which claims 19 and 21 depend. Nakakado et al. fails to teach the missing features. Because a prima facie case of obviousness has not been established, Applicants respectfully request withdrawal of the rejection of claims 19 and 21 under 35 U.S.C. §103.

XIV. CONCLUSION

Accordingly, claims 1-5, 7-10 and 14-21 are believed to be allowable and the application is believed to be in condition for allowance. A prompt action to such end is earnestly solicited.

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should a petition for an extension of time be necessary for the timely reply to the outstanding Office Action (or if such a petition has been made and an additional extension is necessary), petition is hereby made and the Commissioner is authorized to charge any fees (including additional claim fees) to Deposit Account No. 18-0988.

Respectfully submitted,

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